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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

NYK Bulk & Projects Carriers Ltd.

Case No. 24-cv-8006-MRA-SK

**Plaintiff,**

IN ADMIRALTY, Fed. R. Civ. P. 9(h)

v.

Delta Corp Shipping Pte Ltd.

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
NYK BULK & PROJECTS  
CARRIERS LTD'S RENEWED  
MOTION FOR DEFAULT  
JUDGMENT**

## Defendant

and

# Oversea-Chinese Banking Corporation, Limited

**NOTICED FOR HEARING  
MONDAY, OCTOBER 20, 2025  
AT 1:30 PM**

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## TABLE OF CONTENTS

Page No.

Table of Contents	2
Table of Authorities	3
I. Factual and Procedural Background	5
II. Legal Standard	7
III. Default Judgment is Warranted Against Delta	8
IV. <i>Eitel</i> Factors Weigh in Favor of Default Judgment	10
1. The Possibility of Prejudice to the Plaintiff	10
2. The Merits of Plaintiff's Substantive Claim	11
3. Sufficiency of the Complaint: Claims in the Complaint are Sufficiently Alleged and Have Merit	11
4. Sum of Money at Stake in the Action	13
5. No Dispute Concerning Material Facts	14
6. Default Not Due to "Excusable" Neglect	14
7. Policy Favoring Decision on the Merits	15
8. Balance of <i>Eitel</i> Factors Favors Default Judgment	15
V. Damages	16
VI. Conclusion	16

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TABLE OF AUTHORITIESCasesPage No.

3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 <i>Abu-Assal v. Abu-Assal</i> , 20 WL 11508162 (C.D. Cal. 2010).....	11
<i>Aldabe v. Aldabe</i> , 616 F. 2d 1089 (9th Cir. 1980).....	8
<i>Craigslist, Inc. v. Naturemarket, Inc.</i> , 694 F. Supp. 2d 1039 (N.D. Cal. 2010).....	15
<i>Eitel v. McCool</i> , 782 F.2d 1470 (9th Cir. 1986).....	8, 10, 11, 13, 15
<i>Fair Hous. Of Marin v. Combs</i> , 285 F.3d 899 (9th Cir. 2002).....	7, 11, 16
<i>Horowitz v. Sekey Grp.</i> , 2021 WL 8759089 (C.D. Cal. 2021).....	16
<i>In re Tuli</i> , 172 F.3d 707 (9 <sup>th</sup> Cir. 1999).....	8
<i>Landstar Ranger, Inc. v. Parth Enterprises, Inc.</i> , 725 F. Supp.2d 916 (C.D. Cal. 2010).....	12
<i>Liu Hongwei v. Velocity V Ltd. Partnership</i> , 2018 WL 3414053 (C.D. Cal. 2018).....	13
<i>Michael Grecco Prods., Inc. v. Enthusiast Gaming, Inc.</i> , 2020 WL 7227199 (N.D. Cal. Dec. 8, 2020).....	10
<i>Pepsico, Inc. v. Cal. Sec. Cans</i> , 238 F.Supp. 2d 1172.....	11, 13, 15
<i>Philip Morris USA v. Castworld Prods.</i> , 219 F.R.D. 494 (C.D. Cal. 2003).....	8, 14, 16
<i>Shanghai Automation Instrument Co., Ltd. v. Kuei</i> , 194 F. Supp. 2d 995 (N.D. Cal. 2001).....	15

1	<i>Solaria Corp. v. T.S. Energie e Risorse, S.R.I.</i> , 2014 WL 2 7205114 (N.D. Cal. 2014).....	14
2		
3	<i>TeleVideo Systems, Inc. v. Heindenthal</i> , 82 F.2d 915 4 (9th Cir. 1987).....	8
5		
6	<i>Vogel v. Rite Aid Corp.</i> , 992 F. Supp 2d 998 (C.D. Cal. 2014).....	11, 14
7		

### Statutes

8	Fed. R. Civ. P. 9(h).....	9
9		
10	Federal Rule of Civil Procedure 55.....	7, 9, 15
11		
12	Federal Rule of Civil Procedure 62(a).....	7, 16
13		
14	Local Rule 55-1.....	9
15		
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1 Pursuant to this Court's Order (ECF 55), Plaintiff NYK Bulk &  
2 Projects Carriers Ltd. hereby submits the following Memorandum in  
3 Support of NYK Bulk Project Carriers Ltd.'s Renewed Motion for Default  
4 Judgment and in support states as follows:  
5

6 **I. Factual and Procedural Background**

7 On September 18, 2024, Plaintiff NYK Bulk & Projects Carriers Ltd.  
8 ("Plaintiff" or "NBP" or "NYK Bulk") filed its Verified Complaint against  
9 Defendant Delta Corp Shipping PTE Ltd. ("Defendant" or "Delta") *quasi in*  
10 *rem*, pursuant to Supplemental Admiralty Rule B of the Federal Rules of Civil  
11 Procedure for Maritime Attachment and Garnishment. ECF 1 (Verified  
12 Complaint).

13 NBP is a company organized under the law of Japan and, at all  
14 relevant times, chartered an ocean cargo vessel, M/V IRON DUKE (the  
15 "Vessel"), to Delta. *Id.* at ¶ 4 Delta is a Singapore corporation. *Id.* at ¶ 5.

16 Pursuant to a charter party agreement between NYK Bulk and Delta  
17 dated May 14, 2024, Delta agreed to hire the Vessel from NYK Bulk for  
18 carriage of a cargo of Iron Ore Fines from Buchanan, Liberia to Bremen,  
19 Germany. *Id.* at ¶ 7. The agreement was amended on June 27, 2024, to  
20 reflect the provision of fuels and supplies to the Vessel near Bremen, before  
21 finally returning to Bremen for discharge. *Id.* at ¶ 8. Delta returned the  
22 Vessel to NYK Bulk on July 7, 2024, but failed to pay the amounts due to  
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1 Plaintiff under the charter party terms. *Id.* ¶ 9. On August 15, 2024, NYK Bulk  
2 issued a Statement of Account to Delta for charges under the charter party  
3 for \$602,778.31. *Id.* at ¶ 10. On September 9, 2024, Delta responded to  
4 NBP's demand stating that it would pay \$593,567.28. *Id.* at ¶ 11. However,  
5 Delta never made the promised payment. *Id.* As of the filing of the Verified  
6 Complaint, Delta had failed to pay the amount agreed upon under the charter  
7 party as amended. *Id.* at ¶ 12. On the foregoing facts, Plaintiff brings a claim  
8 for breach of maritime contract. *Id.* at ¶ 14-16.

9  
10 On September 9, 2024, this Court granted Plaintiff's *ex parte*  
11 Application for Issuance of Process of Maritime Attachment and  
12 Garnishment pursuant to Supplemental Rule B. ECF 13. Plaintiff served  
13 Defendant with the Verified Complaint and Summons at its registered  
14 address by a process server of the Supreme Court of Singapore on March  
15 19, 2025. ECF 35. On April 30, 2025, Plaintiff filed a Request for Entry of  
16 Default against Defendant. ECF 40. This Court issued a Notice of Deficiency,  
17 ECF 42, but upon review, determined that Defendant had been properly  
18 served with process. ECF 43. On May 14, 2025, the Clerk entered default  
19 against Delta. ECF 44. Plaintiff served its request for entry of default on  
20 Defendant. ECF 41, 45.

21  
22 On June 11, 2025, Plaintiff filed its initial Application for Default  
23 Judgment. ECF 47. The initial application was stricken because it was  
24

1 missing hearing information. ECF 50. On June 16, 2025, NYK refiled. ECF  
2 51. On July 22, 2025, NYK filed its application for order granting NYK's  
3 Application and two proposed orders. ECF 53, ECF 53-1, ECF 53-2. On  
4 August 6, 2025, this Court entered its order (ECF 55) denying, without  
5 prejudice, Plaintiff's Application for Default and ordering that: (1) Plaintiff  
6 renew its Motion within 30 days of the date of the Order; (2) the Motion shall  
7 be accompanied by a detailed memorandum of Points and Authorities  
8 analyzing the applicable legal standards including those described in the  
9 Court's Order (ECF 55); and (3) Plaintiff must file proof of service of the  
10 renewed Motion on Defendant within 10 days of filing the Motion.

## 14 II. Legal Standard

15 Federal Rule of Civil Procedure 55 authorizes the Court to enter default  
16 judgment in plaintiff's favor when the Clerk has previously entered a  
17 defendant's default, as this Court has already done. Fed. R. Civ. P. 55(b)(2).  
18 Federal Rule of Civil Procedure 62(a) allows this Court to order that  
19 enforcement proceedings are not stayed. Fed. R. Civ. P. 62(a) provides:

20  
21  
22 (a) **Automatic Stay.** Except as provided in Rule 62(c) and (d),  
23 execution on a judgment and proceedings to enforce it are stayed for  
24 30 days after its entry, unless the court orders otherwise.

25 Fed. R. Civ. P. 62(a) (emphasis added).

26 At the default judgment stage, all well-pled allegations in the complaint  
27 regarding liability are taken as true, except with respect to damages. *Fair*  
28

*Hous. Of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002); *see also Philip Morris USA v. Castworld Prods.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003) (“[B]y defaulting, Defendant is deemed to have admitted the truth of Plaintiff’s averments”), and *TeleVideo Systems, Inc. v. Heindenthal*, 82 F.2d 915, 917 (9th Cir. 1987) (on entry of default, well-pled complaint allegations deemed true). The district court’s decision to enter a default judgment is discretionary. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092-93 (9th Cir. 1980).

The Ninth Circuit has directed that district courts consider the following factors in exercising discretion as to entry of default judgment: (1) merits of plaintiff’s substantive claim; (2) the sufficiency of the complaint; (3) the possibility of a dispute concerning material facts; (4) whether default was due to excusable neglect; (5) the possibility of prejudice to plaintiff if the motion is denied; (6) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits; and (7) the sum of money at stake in the action. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (“*Eitel* factors”). In applying the discretionary standard, “default judgments are more often granted than denied.” *Philip Morris*, 219 F.R.D. at 498.

### III. Default Judgment is Warranted Against Delta

When entry of judgment is sought against a party who failed to plead or otherwise defend, a district court has an affirmative duty to look into its jurisdiction over both the subject matter and the parties. *In re Tuli*, 172 F.3d

1 707, 712 (9<sup>th</sup> Cir. 1999). The Court has subject matter over this action under  
2 28 U.S.C. §1333, which vests District Courts with original jurisdiction over  
3 “any civil case of admiralty or maritime jurisdiction,” and this is an admiralty  
4 or maritime claim within Fed. R. Civ. P. 9(h) for NBP’s recovery in damages  
5 from Delta for Delta’s breach of maritime contract, namely, breach of vessel  
6 charter party between NBP and Delta for the ocean cargo vessel M/V IRON  
7 DUKE.  
8

9 The service and notice requirements were also satisfied. This Court  
10 determined that Defendant had been properly served with process. ECF 43.  
11

12 Local Rule 55-1 provides that an application for default judgment must  
13 be accompanied by a declaration stating: (1) when and against what party  
14 the default was entered; (2) identifying the pleading to which default was  
15 entered; (3) whether defaulting party is an infant or incompetent person ; (4)  
16 that the Servicemembers Civil Relief Act does not apply; and (5) confirming  
17 notice was served on defaulting party, if required by Fed. R. Civ. P. 55(b)(2).  
18 Plaintiff has satisfied the requirements of Local Rule 55-1. Pursuant to the  
19 Declaration of J. Stephen Simms (the “Simms Declaration”), attached as Ex.  
20 1 hereto. The accompanying Simms Declaration states the Court entered  
21 an Order (Dkt. 43) for the entry of default against Defendant Delta Corp.  
22 Shipping PTE Ltd. and that the Clerk entered Defendant Delta Corp.  
23 Shipping PTE Ltd’s default on the Verified Complaint (Dkt. 44) on May 14,  
24

1 2025. The accompanying Simms Declaration further states that the  
2 defaulting defendant, Delta Corp Shipping PTE Ltd., is not, on information  
3 and belief, an infant, incompetent person, or presently engaged in military  
4 service, therefore the Servicemembers Civil Relief Act does not apply. The  
5 Simms Declaration further confirms that notice was served on the defaulting  
6 party. This Court further found in its order that Plaintiff has served its request  
7 for default and entry of default on Defendant. ECF 41, 45. In its order giving  
8 leave for NYK to renew its Motion (Application), the Court specifically ordered  
9 NYK to file a proof of service of the instant Renewed Motion and supporting  
10 documents within 10 days of filing of the instant Renewed Motion which NYK  
11 will fully comply with.

12 **IV. *Eitel* Factors Weigh in Favor of Default Judgment**

13 **1. The Possibility of Prejudice to the Plaintiff**

14 “A plaintiff who is denied a default judgment and is subsequently left  
15 without any other recourse for recovery has a basis for establishing  
16 prejudice.” *Michael Grecco Prods., Inc. v. Enthusiast Gaming, Inc.*, 2020 WL  
17 7227199, at \*6 (N.D. Cal. Dec. 8, 2020).

18 In this case, Plaintiff was forced to file this action after Defendant failed  
19 to pay pursuant to the parties’ charter party agreement. Plaintiff has incurred  
20 substantial costs to do so. If default judgment is denied, Delta’s refusal to  
21 participate in the case will have the effect of denying Plaintiff the opportunity

1 to obtain judicial resolution of its claim. *Vogel v. Rite Aid Corp.*, 992 F. Supp  
2d 998, 1007 (C.D. Cal. 2014) (plaintiff would suffer prejudice absent entry  
3 of default judgment); *Abu-Assal v. Abu-Assal*, 20 WL11508162, at \*2 (C.D.  
4 Cal. Feb. 8, 2010) (default judgment where defendant fled country to evade  
5 family law court obligations; plaintiff would be significantly prejudiced if  
6 motion denied). Under these circumstances, Plaintiffs will suffer prejudice if  
7 default judgment does not issue. This *Eitel* factor weighs in favor of default  
8 judgment.

11 **2. The Merits of Plaintiff's Substantive Claim**

13 As the Court must accept the factual allegations as true in deciding a  
14 motion for default judgment, Plaintiff pled a meritorious claim for breach of  
15 charter party contract. Based on the above, Plaintiff has properly asserted a  
16 meritorious claim for breach of contract, and this factor favors granting  
17 default judgment.

19 **3. Sufficiency of the Complaint: Claims in the Complaint are  
20 Sufficiently Alleged and Have Merit**

22 Upon entry of default, as this Court indicates in its order (ECF 55, fn.  
23 1), all well-pled allegations in the complaint regarding defendant's liability are  
24 taken as true, except with regard to damages. *Fair Hous. of Marin v. Combs*,  
25 285 F.3d 899, 906 (9th Cir. 2002). *Eitel* factors 1 and 2 require that plaintiff  
26 "state a claim on which the [plaintiff] may recover." *Pepsico, Inc. v. Cal. Sec.*  
27

Cans, 238 F.Supp. 2d 1172, 1175. The Court “must consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law.” *Landstar Ranger, Inc. v. Parth Enterprises, Inc.*, 725 F. Supp.2d 916, 920 (C.D. Cal. 2010).

The Verified Complaint details a claim for breach of contract against Defendant. It alleges, pursuant to a charter party agreement between NYK Bulk and Delta dated May 14, 2024, Delta agreed to hire the Vessel from NYK Bulk for carriage of a cargo of Iron Ore Fines from Buchanan, Liberia to Bremen, Germany. Verified Complaint (ECF 1) at ¶ 7. The agreement was amended on June 27, 2024, to reflect the provision of fuels and supplies to the Vessel near Bremen, before finally returning to Bremen for discharge. *Id.* at ¶ 8. Delta returned the Vessel to NYK Bulk on July 7, 2024, but failed to pay the amounts due to Plaintiff under the charter party terms. *Id.* ¶ 9. On August 15, 2024, NYK Bulk issued a Statement of Account to Delta for charges under the charter party for \$602,778.31. *Id.* at ¶ 10. On September 9, 2024, Delta responded to NBP's demand stating that it would pay \$593,567.28. *Id.* at ¶ 11. However, Delta never made the promised payment. *Id.* As of the filing of the Verified Complaint, Delta has failed to pay the amount agreed upon under the charter party as amended. *Id.* at ¶ 12. On the foregoing facts, NYK brings a claim for breach of maritime contract. *Id.* at ¶ 14-16

#### **4. Sum of Money at Stake in the Action**

The court considers the amount of money at stake in relation to the seriousness of defendant's conduct. *Pepsico, Inc.*, 238 F. Supp. 2d at 1176. This factor does not impede default judgment as long as potential damages are "proportional to the harm alleged." *Liu Hongwei v. Velocity V Ltd. Partnership*, 2018 WL 3414053, at \*8 (C.D. Cal. Jul. 11, 2018) (damage of \$4m justified). NBP initially issued to Delta a Statement of Account for charges due under the Vessel charter party, for USD \$602,778.31 in damages for breach of the charter party. As explained in the sworn affidavit of Goro Yamamoto (Yamamoto Affidavit, Exhibit 2 hereto), which accompanies this Motion for Default and Memorandum of Points and Authorities, in May 2025, a payment was made to the account of USD 325,125.65 which reduced the amount owed by Delta. See Yamamoto Affidavit, ¶ 7 and Exhibit A thereto.

Plaintiff now seeks **USD 357,650.27** (Vessel Charter Party hire and related amounts of USD \$314,989.47 and attorneys' fees and costs of at least USD \$42,660.80). This amount is appropriate and proportional to Defendant's failure to pay amounts due and owing under the Charter Party, forcing Plaintiff to file this lawsuit and incur substantial legal costs and business disruption. This *Eitel* factor favors default judgment.

## 5. No Dispute Concerning Material Facts

By defaulting, defendant “is deemed to have admitted the truth of Plaintiff’s averments.” *Philip Morris*, 219 F.R.D. at 499. Based on Delta’s failure to appear, this Court should infer the absence of the possibility of a dispute of material fact. See e.g., *Solaria Corp. v. T.S. Energie e Risorse, S.R.I.*, 2014 WL 7205114, at \*3 (N.D. Cal. Dec. 17, 2014) (court can infer “absence of the possibility of a dispute concerning material facts” from defendants’ failure to appear).

The absence of a dispute over material facts is also established if there is a properly-pled complaint and defendant fails to oppose the request for entry of default; in that event, “no factual dispute exists that would preclude entry of default judgment.” *Vogel v. Rite Aid Corp.*, 992 F. Supp 2d 998, 1012-13 (C.D. Cal. 2014). Indeed, Defendant has failed to appear altogether in this case. Accordingly, this factor weighs in favor of default judgment.

## 6. Default Not Due to “Excusable” Neglect

There is no possibility of a dispute concerning material facts as to defendant and whether default was due to excusable neglect. Plaintiff served defendant Delta with its request for default (ECF 41), with the Court's Order for the Clerk to enter default (ECF 45), its first application for entry of default (ECF 48), and its refiled application for default (ECF 52). Despite this, Delta has failed to appear or respond. Pursuant to this Court's Order (ECF 55), a

copy of this Renewed Motion for Default and all supporting documents will be served as set forth in the notice of service. On these facts, there is no possibility default was due to excusable neglect. *Shanghai Automation Instrument Co., Ltd. v. Kuei*, 194 F. Supp. 2d 995, 1005 (N.D. Cal. 2001) (factor favors default judgment if defendant properly served with complaint, request for entry of default and request for default judgment).

## 7. Policy Favoring Decision on the Merits

The Ninth Circuit acknowledges cases should be decided on the merits “whenever reasonably possible.” *Eitel*, 782 F. 2d at 1472. This factor appears to weigh against entry of default judgment, but it is not dispositive. *PepsiCo, Inc. v. Cal. Sec. Cans*, 283 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) (Rule 55(b) demonstrates “this preference, standing alone, is not dispositive”). This is true where a defendant fails to defend the action or to challenge the entry of default, making decision on the merits “impractical, if not impossible.” *Id.*; *Craigslist, Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1061 (N.D. Cal. 2010).

This factor is likely neutral in this case, since Defendant had an opportunity to have the suit decided on the merits but chose not to take it. Indeed, Defendant has failed to defend the action at all.

## 8. Balance of *Eitel* Factors Favors Default Judgment

As set out above, the balance of the *Eitel* factors weigh in favor of

1 default judgment on Plaintiff's claim.

2 **V. DAMAGES**

3 At the default judgment stage, all well-pled allegations in the complaint  
4 regarding liability are taken as true, except with respect to damages. *Fair*  
5 *Hous. Of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002). Plaintiffs must  
6 therefore prove the damages sought in the Complaint. *Horowitz v. Sekey*  
7 *Grp.*, 2021 WL 8759089, at \*1 (C.D. Cal. Nov. 1, 2021) (on default judgment  
8 motion plaintiff bears burden of proving damages). Damages may be proven  
9 through testimony or written affidavit. *Philip Morris*, 219 F.R.D. at 498.

10 The sworn affidavit of Goro Yamamoto filed with this Motion establish  
11 Plaintiff's damages including attorneys' fees. Yamamoto Affidavit, ¶¶ 5, 6, 7,  
12 8.

13 **VI. CONCLUSION**

14 Plaintiff respectfully requests that the Court enter final judgment by  
15 default: (a) against Defendant Delta for **USD \$357,650.27** (Vessel Charter  
16 Party hire and related amounts of USD \$314,989.47 and attorneys' fees and  
17 costs of at least USD \$42,660.80); and (b) further order that, pursuant to Fed.  
18 R. Civ. P. 62(a), proceedings to enforce the judgment are not stayed.

19 Dated: September 5, 2025

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Respectfully submitted,

/s/ J. Stephen Simms

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